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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER				
DOAN, ROBYN KIEU				
ART UNIT		PAPER NUMBER		
3732				
NOTIFICATION DATE		DELIVERY MODE		
02/27/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

09/787,409

Applicant(s)

GUERET, JEAN-LOUIS

Examiner

Robyn Doan

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24, 25, 29-34 and 36-74 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24, 25, 29-34 and 36-74 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Applicant's Amendment filed 11/28/2007 has been entered and carefully considered. Claims 24, 25, 29-31, 36, 38, 43, 48-50, 55, 58, 60, 66, 67, 69 have been amended. Claims 26, 27, 35 have been canceled. New claims 71-74 have been amended. Limitations of amended and new claims have not been found to be patentable over prior art of record and newly discovered prior art, therefore, claims 24, 25, 29-34, 36-74 are rejected under the same and new ground rejections as set forth below.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 43, 44 are rejected under 35 U.S.C. 102(b) as being anticipated by McKay (USP 5,325,878).

With regard to claim 43, McKay discloses a comb (fig. 4) inherently for applying a product to keratinous fibers including an arrangement of teeth (30) capable of applying a product, wherein the arrangement of teeth being obtained by at least two separate parts (28, 30) along an axis, wherein the two parts being joined together pivotally by a film hinge (34), a layer of absorbent material (14) being inserted between two parts. In

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regard to claim 44, the absorbent material being made of open cell foam (sponge, col. 3, lines 27-30).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over McKay.

McKay discloses a comb (fig. 5) inherently for applying a product to keratinous fibers including an arrangement of teeth (30) capable of applying a product, wherein the arrangement of teeth being obtained by at least two separate parts (28, 30) along an axis, wherein the two parts being formed by a single material (see fig. 5) and being joined together pivotally by a film hinge (36), wherein the film hinge being oriented at a right angle to the axis. McKay further shows an element for grasping the comb (12). McKay fails to show the two parts being made of molded thermoplastic material, however, it would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct two parts with molded thermoplastic material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. In regard to claim 37, McKay fails to show

the film hinge being oriented parallel to the axis, however, it would have been obvious matter of design choice to construct the film hinge being oriented parallel to the axis.

Claims 24, 25, 28-34, 39- 42, 47-51, 60, 61,66-69 are rejected under 35 U.S.C. 103(a) as being unpatentable over French Patent '805 (IDS cited reference) in view of DE '273 (IDS cited reference).

With regard to claims 24, 25, 28-34, 39, 47-51, 60, 61, 66-69, FR '805 discloses a cosmetic comb (fig. 1) comprising a first part (1) with a first elongate base (5) along the length of which is connected a first succession of teeth (3), a second part (2) with a second elongated base (9) along the length of which is connected a second succession of teeth (4), wherein the first part with first teeth connected to an elongated base (5), the second part with second teeth connected to a second base (9), the first and second bases being secured on a same wand (7) and being along a plane surface. FR '805 fails to show the two parts joined together by a film hinge and being made of a single material of molded thermoplastic, the teeth of both parts being offset from each other, wherein, when viewed from the side, the two consecutive teeth form between a notch. DE '273 discloses a cosmetic applicator having a plurality of teeth (fig. 5), wherein at least two consecutive teeth being offset from each other and forming a notch. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the offset teeth as taught by DE '273 into the FR '805 in order to improve the purpose of applying cosmetic to the eyelashes. And it would also have been obvious to one having an ordinary skill in the art at the time the invention was

made to form the two parts joined together by a film hinge and as a single piece, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. Also, it would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct two parts with molded thermoplastic material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. In regard to claims 40, 41, it would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the different material for each of the parts and the thermoplastic comprises Teflon, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over French Patent '805 in view of DE '273 and further in view of Gueret (USP 5,765,573).

French Patent '805 in view of DE '273 discloses the essential claimed invention except for the at least one portion of the two parts being covered with flocking. Gueret discloses a makeup brush (fig. 50 comprising applicator part (7) covered with flocking material (13). it would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the flocking material as taught by Gueret into

the device of '805 in view of '273 in order to ensure a better loading of the product to the applicator.

Claims 45, 46, 52-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over FR '805 in view of DE '273 as applied to claim 24 above, and further in view of Montgomery '870 (IDS cited reference).

With regard to claims 45, 46, 52-54, FR '805 in view of DE '273 disclose the essential claimed invention except for a container for container a reserve product, a the container being fitted with a wringing-out member. Montgomery discloses a mascara device (fig. 2) comprising a container (13) and a wringing-out member (49) is fitted with the container. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the container with the wringing-out as taught by Montgomery '870 into the device of FR '805 in view of DE '273 in order to contain the product.

Claims 55-59, 62-65, 70-74 are rejected under 35 U.S.C. 103(a) as being unpatentable over FR '805 in view of DE '273 as applied to claim 24 above, and further in view of Miraglia (U.S. Pat. # 5,709,230).

With regard to claims 55-59, 62-65, FR '805 in view of DE '273 disclose the essential claimed invention except for an end portion free of teeth of the parts fits into a hole of a hollow wand, and the first and second bases forming a cross section and wherein the cross section being cylindrical, a portion of the hinge being located inside

the hole of the wand. Miraglia discloses a comb device (fig. 1) comprising a hollow wand (28) in order to fit a base (27) of the comb. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the hollow wand as taught by Miraglia into the device of FR '805 in view of DE '273 in order to support the base of the comb. And it would have been obvious to one having an ordinary skill in the art at the time the invention was made to form a portion of the hinge being located inside of the wand and the cross section of the bases being cylindrical, since such modification would involve a change in the shape of the component.

Response to Arguments

Applicant's arguments with respect to claims 24, 25, 30, 31, 36, 43, 55, 58, 60, 66-69 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robyn Doan/
Primary Examiner
Art Unit 3732

rkd
February 18, 2008

